In the High Court of Judicature at Madras

Dated:21.02.2007

Coram

The Honourable Mr.Justice A.C.ARUMUGAPERUMAL ADITYAN

Second Appeal No.270 OF 1997

Melvisharam Muslim Educational Society
Melvisharam, by its General Secretary
melvisharam,N.A.A.District ..Appellant/Appellant/
Plaintiff

v

1. The Tamil Nadu Wakf Board
Madras by its Secretary
No.3, Santhome High Road,
Madras-4

2. State of Tamil Nadu
by the Collector of
N.A.A.District, Vellore ..Respondents/Respondents/
Defendants 1 & 2

This second appeal is filed U/S 100 CPC against the judgment and decree dated 29.11.1996 made in A.S.No.153 of 1994 on the file of Principal District Judge, N.A.A.District, Vellore dismissing the appeal of the appellant filed against the decree and Judgment dated 26.10.1994 in O.S.No.293 of 1991 on the file of the Court of Subordinate Judge, Ranipet, N.A.A.District.

For Appellant : Mr.S.I.Samiullah
For Respondents : Mr.M.Munir Sheriff-R1
Ms.R.Shanthi Rekkappan,G.A.-R2

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JUDGMENT

This appeal has been preferred against the Judgment and decree in A.S.No.153 of 1994 on the file of the Court of Principal District Judge, Vellore. The plaintiff, who has lost his case before both the Courts below is the appellant herein. The suit is for declaration that the demand of contribution by the first defendant under Notice dated 14.2.1979 under Section 46(4) of the Act 29 of 1954(Section 72 of Wakf Act 1995(Act 43 of 1995)and the proceedings under the

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Revenue Recovery Act by the defendants are void, illegal and without jurisdiction. The plaintiff has also prayed for an order of permanent injunction restraining the defendants from enforcing the demand for contribution through the provisions under the Revenue Recovery Act.

2. The averments in the plaint for the purpose of deciding this appeal are as follows:

The plaintiff Institution is a trust registered under the Societies Registration Act 21 of 1860. The Institution is controlled by its rules and regulations. After passing of the Central Act 29/1954, the first defendant has notified the said institution as a Wakf and the said notification was published in the Fort St.George Gazette. Soon after the notification, the Government has issued a G.O.3408 Revenue dated 17.11.1959 under which they exercised their power under Section 63 of the Act 29/1954 and declared that the notification if any issued by the first defendant with regard to the institutions registered under the Societies Registration Act 21/1860 be withdrawn forthwith. Consequently, the plaintiff did not take any action to institute a suit as contemplated under Section 6 of the Act 29/1954.

2a) The plaintiff is a charitable trust with all ingredients of a trust known to law. The properties belonging to the plaintiff institution vest with the trustees and the object of the institution being secular and charitable, plaintiff institution comes under the definition of trust as contemplated under law and judicial precedents. Under Section 3(a) of the amending Act 34 /64, the first defendant had not taken any steps to have the plaintiff institution being denotified with the result the first defendant has no locus standi to exercise any supervisory control over the plaintiff institution by virtue of Act 29 of 1954 The first defendant in the absence of any fresh notification or power or authority to exercise supervisory control over the plaintiff institution has been making demands for payment of contribution without any powers under Section 46 of Act 29/1954. The demand has been made through telegram and general circulars by the first defendant to which the plaintiff has sent suitable replies. Finally on 25.12.1978, the plaintiff explained his stand, reaffirmed and reiterated by subsequent communications, which stand had not been contradicted or seriously challenged by the first defendant till 1.2.1979 . In the absence of proper fresh notification, the first defendant chosen to issue a noticie dated 14.2.1979 under Section 46(4) of Act 29/1954 for the recovery of a sum of Rs.19,993.29ps under Revenue Recovery Act. Subsequently, the Tahsildar of Wallajah sent a notice of demand for Rs.19,993.29ps to the plaintiff on 26.3.1979. After issuance of G.O.3408 dated 17.11.1959, the first defendant cannot claim any contribution from the plaintiff. The demand of contribution by the first defendant from the plaintiff is illegal and arbitrary and

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opposed to law. The institution similar in nature of the plaintiff viz., the Muslim Education Association of South India and Madrase kaire Jaria are outside the purview of Act 29/1954 and hence the action of the first defendant is wholly unjustified and opposed to law. The plaintiff institution has issued a notice under Section 80 CPC and also under Section 56 of Act 29/1954 to the defendants on 2.4.1979 and the same has been served.

2b) The plaintiff has also filed O.S.No.240 of 1979 on the file of this Court praying for a declaration that the demand for contribution under notice dated 14.2.1979 followed the proceedings undenr the Revenue Recovery Act by the defendants are void, illegal , inoperative and for a permanent injjunction restraining the defendants from enforcing the demand for contribution under the Revenue Recovery Act or otherwise. The said suit was dismissied on 30.9.1985 on the ground that the suit is not maintainable forwant of notice under Section 56 of Act 29/1954. On an appeal, the first appellate Court in its Judgment in A.S.No.244 of 1985 has allowed the appeal and remanded the suit and has observed that the plaint will have to be rejected allowing the plaintiff to file a fresh suit on the same cause of action. After remand, the trial Court once again dismisised the suit on 27.11.1986 giving opportunity to the plaintiff to file a fresh suit on the same cause of action. Hence the suit.

3. The first defendant has filed written statement contending that the suit is not maintainable. The plaintiff has not filed the suit within a year of the notification in the gazette . The import of the G.O.No.3408 dated 17.11.1959 has not been correctly given by the plaintiff because of the G.O., the plaintiff did not have the institution registered or complied with the other provisions of the Act as the institution originally notified had been subsequently denotified are all false. Even the G.O.3408 dated 17.11.1959 issued by the Governmnet has recommended the deletion of certain institutions which have been registered under Central Act 21 of 1860 and which are not covered by the definition of Wakf in the Wakf Act. Even the said exemptions have been subsequently withdrawn in the year 1978. Hence the plaintiff institution which is a Wakf cannot come under the purview of the said G.O. The said G.O. Directed the board (this defendant) not to take any further proceedings in respect of the institutions registered under Societies Registration Act which are not wakfs as defined under the Act. As a matter of fact, it was conclusively held in W.P.No.1402 of 1963 fileld by the present plaintiff that the properties are Wakf properties . Hence it is futile on the part of the petitioner to contend that the properties vest with the trustees and the object of the institution being secular and charitable the plaintiff institution comes under the definition of trust as contemplated under the Act and Judicial precedent. As observed by the Court in the said writ petition, it is

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irrelevant whether the properties are dedicated to the wakf or not. They were purchased for the benefit of the wakf from and out of the contributions made by the public. Education itself is a charitable object under Muslim law. As a matter of fact, even in the proforma,the object of the wakf has been mentioned to import religious and secular education to all communities. The allegation that after the amending Act 34 of 1964 under Section 3(a), the first defendant has not taken steps to have the plaintiff institution notified with the result that the defendant has no locus standi to exercise supervisory control over the plaintiff institution by virtue of Act 29 of 1954 is in correct and misleading. As a matter of fact as stated above, as per the provision of Section 30 of the Act which is saving provision in nature, there was no need to register a fresh , the plaintiff wakf was not exempted or denotified by the first defendant and consequently there is no question of re notification arising in this case. Hence it is futile to contend that the Wakf board has no locus standi to supeprvise the plaintiff institution. As a matter of fact, the plaintiff institution is estopped from raising this plea because even after the said amendment of Section 3(a) of the Act, the plaintiff has remitted contributions to the first defenant and rendered accounts and they have promised to clear the arrears in instalments vide their letter dated 5.4.1973 to the first defendant. As a matter of fact far from contending that they are not liable to pay contributions, it was the plaintiff who was requesting time for payment and the facility of instalments. Notices of demand have been sent by the first defendant on 14.6.1978,29.8.1978,12.12.1978, 31.1.1979 and 1.2.1979 . Since the demand of the first defendant has not been complied with by the plaintiff, the first defendant initiated proceedings under the Revenue Recovery Act after issuing show cause notice to the plaintiff. The Muslim Educational Association of Southern India and Madarasa Kaire jaria have been exempted by the first defendant and subsequently in 1978 even those exemeptions have been withdrawn. There is no question of discrimination made by the first defendant. The present suit is barred by the principles of resjudicata. It has been clearly established in Writ Petiton No.1402/1963 on the file of this Court dated 2.9.1976 that the plaintiff institution is a Wakf and is liable to pay contribution as per the amendment of Section 3 (a) of the Act 1954. Even as per the decision in S.A.No.1768 of 1972, this Court's Judgment dated 3.2.1976, the plaintiff is a wakf and the first defendant has got every right to claim contributions. The suit has been filed only to drag on the proceedings and put off the payment of contribution and with hold the same illegally. All the present contentions raised in the suit have been dealt with and decided in the earlier actions in O.S.No.4922 of 1968 City Civil Court, Madras and in A.S.No.190 of 1971 and S.A.No.1768 of 1972. The plaintiff having failed to file a suit within a year as per Section 6 of the Wakf Act cannot now contend that the suit institution is not a wakf. The findings in W.P.No.1402 of 1963 will be a clear bar

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to the present suit and the present suit is barred by principles of res judicate. The present plaintiff has buildings in Triplicane at Madras. As a matter of fact the plaintiff claiming exemptions as per the provisions of the recent G.O. of Tamil Nadu exempting the Rent Control Act to wakf properties have instituted suits for eviction of the tenants. The plaintiff cannot blow hot and cold. Hence , the suit is liable to be dismissed.

4. The second defendant has filed a written statement contending that the most statutory notice under Section 80 CPC has been served on the second defendant. The second defendant is not a necessary party to the suit. The notice dated 26.3.1979 claiming arrears of contributions under the Revenue Recovery Act for a sum of Rs.19,993.29ps is not traceable by the second defenant. It may be pending with the office of the Tahsildar, Wallajah. Hence the suit is liable to be dismissed.

5. On the above pleadings, the trial Court had framed six issues for trial. On the side of the plaintiff, P.W1 was examined and Exs P1 to P4 were marked. On the side of the defendants D.W.1 was examined and Exs B1 to B33 were marked.

6. After going through the document of proof on b oth sides, and after considering the oral evidence of rival parties, the learned trial Judge has come to the conclusion that the plaintiff is not entitled to any relief asked for in the suit and consequently dismissed the suit with costs. Aggrieved by the Judgement of the learned trial Judge, the plaintifif has preferred an appeal in A.S.No.153 of 1994 before the Principal District Judge, Vellore. The first appellate Judge, while concurring with the findings of the learned trial Judge has dismissied the appeal confirming the decree and judgment of the trial Court. Hence the plaintiff is before this Court.

7. The substantial questions of law involved in this appeal are

> "1. Whether the appellant Trust is exempt from the purview of Wakf Act,29 of 1954?
> 2. Whether the findings of the Courts below against the appellant are sustainable in law?
> 3. Whether the Courts below committed an error in not framing and deciding proper issues, resulting in any mis trial or miscarriage of justice?

8. I heard Mr.S.I.Samiullah, learned counsel appearing for the appellant, Mr.M.Munitr Sheriff, learned counsel appearing for the first respondent and Ms.R.Shanthi Rekkappan, learned Government Advocate for the second respondent and considered their respective submissions.

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9.The Points:

As per Section 3 of the Wakf Act, under Ex B30 the Second respondent in S.A.No.1768 of 1972, has declared the appellant/plaintifif as a Wakf as defined under the Wakf Act . It is the case of the appellant/plaintiff that the plaintiff Institution have been exempted by the Government under G.O.NO.3408 dated 17.11.1959 from the purview of the Wakf Act. The grievance of the appellant/plaintiff is that the first defendant considering the plaintiff as a Wakf governed under the provisions of the Wakf Act 43 of 1995 has issued notices claiming contributions under Section 72(Wakf Act 43 of 1995(Section 46 of Old Act 29 of 1954) under Ex A3 and also under EX A5 notice stating that in case of default of payment of amount of contributions, the necessary steps will be taken under the Revenue Recovery Act to collect the same. The plaintiff has taken shelter under the G.O.NO.3408 dated 17.11.1959 claiming that under Section 3 of the Act 21 of 1860, the plaintiff being registered under the Societies Registration Act 18/60 has been exempted under the Government Order 3408 dated 17.11.1959.

10. The learned counsel appearing for the appellant/plaintiff would contend that since he has failed to produce the said G.O.3408 dated 17.11.1959, the first appellate Court has dismissed the appeal. Ex A1 has been produced to show that the plaintiff has been registered under the Societies Registration Act 18/60. Before this Court, the learned counsel appearing for the first respondent has produced G.O.3408 dated 17.11.1959 and has also annexed with the G.O, the institutions which were exemepted from the purview of the Tamil Nadu Wakf Act as per G.O.3408 dated 17.11.1959. There are 13 societies which have been exempted under the purview of the Wakf Act as per G.O.3408 dated 17.11.1959. The plaintiff is not one among the 13 institutions exempted from the purview of the Wakf as per the above said G.O. The plaintiff has not produced any document to show that G.O.3408 dated 17.11.1959 will be applicable to the plaintifif's institution also. The learned counsel appearing for the first defenant would contend that even the exemptions given to the above said 13 institutions under G.O.3408 dated 17.11.1959 by the first defenant has subsequently been withdrawn by the Government. The plaintiff has filed an earlier suit in O.S.No.4922 of 1968 before the City Civil Court for declaration and injunction contending that the plaintiff institution is not a wakf within the meaning and description of Section 3 of Wakf Act 1954. The said suit was dismissied. Ex P33 is the copy of the Judgment .Against the said finding , the plaintiff has preferred A.S.No.190 of 1971 before the Second Additional Judge, City Civil Court, Madras. The first appellate Court has also dismissed the appeal thereby confirming the decree and Judgment in Ex B33 suit. Ex B32 is the copy of the Judgment in A.S.No.190 of 1971 on the file of the Second Additional

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Judge, City Civil Court, Madras. Against the findings of the first appellate Court, the plaintiff has preferred second appeal in S.A.No.1768 of 1972 before this Court. EX B30 is the Judgment in S.A.No.1768 of 1972 . It has been held in Ex B30 judgement that in lieu of the amendment to the Wakf Act, the contributions cannot be claimed for a period from 1954 to 1964. But for the subsequent period, the plaintiff as an institution covered under the Wakf Act is liable to pay the contribution as per Section 3(a) of the Wakf Act. Since the plaintiff has failed to prove that G.O.3408 dated 17.11.1959 will be applicable to the plaintiff institution, he cannot entitle to any relief under the suit as rightly held by the Courts below. I do not find any illegality or infirmity in the well considered Judgement of the learned Principal District Judge, in A.S.No.153 of 1994 to warrant any interference from this Court. The points are answered accordingly.

10. In the result, the appeal is dismissed confirming the decree and Judgment in A.S.No.153 of 1994 on the file of the Court of Principal District Judge, Vellore. In the circumstances of the case, there is no order as to costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

sg

To

1. The Principal District Judge, Vellore
2. The Subordinate Judge, Ranipet.
3. The Section Officer, VR Section,High Court, Madras.

+1cc to Mr.M.Munir Sheriff, Advocate Sr 10455
+1cc to Govt. Pleader Sr 10311
+1cc to Mr.S.I.Samiullah, Advocate Sr 10105

MJ (CO)
km/5.3.

Second Appeal No.270 of 1997

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